

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

MFA.No. 391 of 2002()

OPMV.147/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PUNALUR

APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE COMPANY LIMITED, NOW
REPRESENTED BY ITS ASSISTANT ADMINISTRATIVE
OFFICER, REGIONAL OFFICE, AJAY VIHAR,M.G.ROAD,
KOCHI-16.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONER AND RESPONDENTS 1 & 2:

1. NANDAKUMAR, S/O. VIJAYAN PILLAI,
UDAYA BHAVAN, AGASTHYACODE, ANCHAL P.O.
2. SUDHEERKHAN, S/O. MOHAMMED RASHEED,
LAKSHOM VEEDU, MUSLIM STREET, KOTTARAKKARA.
3. SUNILKUMAR, S/O.SURENDRAN,
AMBILI VILASAM, PUNJAKONAM, KARUKONE, ALAYAMON
VILLAGE, KOLLAM DIST.

R1 BY ADV. SRI. REJI MATHEW KAVALAYIL

R2 BY ADV. SRI.D. JAYACHANDRAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 04/01/2007 , THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P. No. 3413 OF 2002 IN M.F.A.No. 391 OF 2002

DISPOSED OF VIDE JUDGMENT DATED 04.01.2007

04.01.2007

SD/- K.T. SANKARAN, JUDGE.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

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M.F.A. No. 391 OF 2002

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Dated this the 4th January , 2007

J U D G M E N T

The third respondent in O.P.(MV) 147 of 1996 on the file of the M.A.C.T., Punalur, challenges the award to the extent to which the Tribunal has not granted permission to the appellant to proceed against the insured for realization of compensation amount.

2. The petitioner in the O.P.(MV) claimed compensation on account of the injury sustained by him in an accident which took place on 17.12.1995. The claimant/ petitioner was travelling as a pillion rider on a scooter. An autorickshaw bearing registration KL-02/C-4478 owned by the first respondent in the O.P.(MV) and driven by the second respondent hit the scooter and the petitioner sustained injuries. The appellant herein is the insurer of the autorickshaw. The appellant stated in the written statement filed by it that there was valid policy of insurance covering the

relevant period. But the liability to indemnify the owner of the autorickshaw was denied on the ground that the second respondent-driver was not having the required badge to drive the autorickshaw on the date of the accident.

3. The Tribunal found that the petitioner in the O.P.(MV) is entitled to get compensation of Rs.39,518/-. In paragraph 11 of the award, it was held thus:

“Respondents 1&2 are jointly liable. R1 being the owner of the autorickshaw, bearing registration number KL/02/C/4478 is vicariously liable for the negligence of R2, its driver and R3, admittedly being the insurer of the said autorickshaw is liable to indemnify R1. Hence R3 will deposit the amount. The issue is answered accordingly.”

4. The appellant-Insurance Company was directed to pay the amount. The Tribunal did not consider the question as to whether the appellant-insurer could be granted liberty to proceed against the insured for realisation of the amount. The Tribunal also did not consider the

question as to whether the driver of the autorickshaw had the required badge at the relevant time. Learned counsel for the appellant relied on the decisions reported in **2000(1) KLT 224 (Govindankutty Nair vs. Gopalakrishnan)** and **2004 (1)KLT 781(SC) (National Insurance Co. Ltd. vs. Swaran Singh)**. It was contended by the appellant that though there could be a direction to the appellant to satisfy the award, even in the case of absence of the driving licence or other disqualification of the driver, the Tribunal should have granted liberty to the insurer to proceed against the insured for reimbursement of the amount paid by the insurer. The Supreme Court in **Swaran Singh's case (2004 (1) KLT 781 (SC))** has held that even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. Mere absence of driving licence or disqualification of the driver for driving the vehicle at the relevant time are not by themselves defences

available to the insurer against either the insured or the third parties. The Supreme Court held that where on adjudication of the claim under the Act, the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub Section (7), as interpreted in the decision, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal.

5. The Tribunal has not decided the question as to whether the driver of the autorickshaw had the required badge and whether he was competent to drive the vehicle on the relevant date; and whether the insurer has discharged the burden of proof cast on him as held in **Swaran Singh's** case. The Tribunal has also not rendered a finding on the point as to whether the insurer is entitled to proceed against the insured, in case the insurer pays the compensation amount to the third party. In these circumstances, it is necessary to direct the Tribunal to decide that question and for that purpose, it is necessary to remand the case. However, it is not necessary to disturb the finding of the Tribunal that the

petitioner/claimant in the O.P.(MV) is entitled to get compensation or the finding on the quantum of compensation. The limited question to be enquired into by the Tribunal is the question as to whether the insurer is entitled to realise from the insured the amount paid by it to the third party.

In the result, M.F.A. is allowed in part and the matter is remanded to the M.A.C.T. for a decision on the question mentioned above, in the light of the decision of the Supreme Court in **Swaran Singh's case**. It is made clear that the award passed by the Tribunal in favour of the petitioner in the O.P.(MV) is not being interfered with in this appeal and the only question directed to be considered afresh is as stated above.

**K.T. SANKARAN,
JUDGE.**

K.T. SANKARAN, J.

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M.F.A. No. 391 OF 2002

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Dated this the 4th January, 2007

J U D G M E N T